

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION**

**THE ESTATE OF JOHN R. BROWN  
by and through JO ANN BROWN-JENKINS,  
ET AL.,**

**PLAINTIFFS,**

**VS.**

**CIVIL ACTION NO. 2:04CV324-P-B**

**MARINER HEALTH CARE, INC. f/k/a  
MARINER POST-ACUTE NETWORK, INC.;  
ET AL.,**

**DEFENDANTS.**

**ORDER**

This matter comes before the court upon Plaintiffs' Motion to Remand [15-1] and Defendant West Westbrook's Motion to Dismiss [14-1]. Upon due consideration of the motions and the responses filed thereto, the court finds as follows, to-wit:

It is undisputed that the plaintiffs did not comply with Mississippi Code Annotated § 15-1-36(15)'s requirement that they serve a notice of intent to sue upon the health-care provider West Westbrook 60 days before filing suit. Therefore, the plaintiffs' motion to remand should be denied and Westbrook's motion to dismiss should be granted.

**IT IS THEREFORE ORDERED AND ADJUDGED** that:

- (1) Plaintiffs' Motion to Remand [15-1] is **DENIED**;
- (2) Defendant West Westbrook's Motion to Dismiss [14-1] is **GRANTED**; therefore,
- (3) All of the plaintiffs' claims against West Westbrook are **DENIED WITH PREJUDICE**.

**SO ORDERED** this the 31<sup>st</sup> day of May, A.D., 2006.

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/s/ W. Allen Pepper, Jr.  
W. ALLEN PEPPER, JR.  
UNITED STATES DISTRICT JUDGE